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# Contract Negotiation Techniques

## Post-Award Negotiations

### Chapter 9

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Federal Acquisition Institute  
General Services Administration

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# **Contract Modifications**

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**Negotiate a bilateral supplemental agreement**

- **Similar to sole source**
- **Cost analysis is basic for negotiation**

**Bargaining environment differences :**

- **Government has fewer alternatives**
- **Deadlock does not prevent delivery**

# **Unilateral Change Order**

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- **Mutual agreement not necessary**
  - **One-sided government action**
  - **Often directed when insufficient time**
- **Equitable price adjustment**
  - **Negotiated agreement preferred**
  - **CO price determination**
  - **Unilateral decision subject to litigation**

## **Advantages of Negotiated Settlement**

- **Government benefits:**
  - “Burden of proof” avoided
  - Avoid cost risk
- **Contractor benefits:**
  - Avoids lengthy litigation
  - Avoids significant legal & accounting expenses
  - Avoids legal certification of costs
- **Overall benefit: More win/win**

# Termination Settlements

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- Two types: “T4C” & “T4D”
- Minimum bargaining pressure on government
- Negotiation environment:
  - Fixed price contracts become cost reimbursable
  - Cost allowability disputes
  - Were costs incurred before or after termination notice?

## Win/Win Philosophy on Termination Settlements

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**"A settlement should compensate the contractor fairly for the work done and the preparation made for the terminated portions of the contract, including a reasonable allowance for profit. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement."**

(FAR 49.201)

## **Negotiated Termination Agreement Advantages**

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- **Government benefits**
  - Win/win outcomes more likely
  - Other ongoing contracts and future business
  - Good reputation within industry
  - Avoids burden of proof
- **Contractor benefits**
  - Cash flow problems minimized
  - Avoids lengthy litigation and associated costs
  - Avoids claim certification
  - Maintains good relationship with government